

# Memorandum

**To:** Chair and Commissioners

**Date:** June 16, 2003

**From:** Diane C. Eidam  
Executive Director

**File No:** Agenda Item 4.11  
Information Item

**Ref:** Preliminary Draft Guidelines for Approving an AB 1335 Letter of No Prejudice for Traffic Congestion Relief Program (TCRP) Projects

**Issue:** Guidelines for approving a Letter of No Prejudice (Letter) for TCRP projects are in the preliminary draft stage. Regional agencies and interested parties were asked to comment on these guidelines at the June 11, 2003 workshop and staff received numerous comments. The Guidelines are being noticed at the June Commission meeting. Staff intends to revise the guidelines to clarify them in response to the questions raised. Staff intends to present the guidelines for adoption at the August Commission meeting.

**Recommendation:** Direct Caltrans and Commission staff to continue working with the regional agencies and interested parties to develop guidelines that the Commission can consider for adoption at a future Commission meeting.

**Background:** Attached are Preliminary Draft Guidelines for approving a Letter of No Prejudice for eligible projects listed in the statutes (AB 2928, Torlakson) implementing Traffic Congestion Relief Program. The Preliminary Draft Guidelines contain the basic intent of the law, as well as additional clarifying language that staff proposes to include in the Guidelines.

**Synopsis of the Statutes:** Under AB 1335 (Cohn), a regional or local entity that is a lead applicant agency, as defined in Government Code Section 14556.40), may apply to the Commission for a letter of no prejudice for the project. If approved by the Commission, the letter of no prejudice allows the regional or local entity to expend its own funds for any component of the transportation project. **(It should be noted that agencies proceed at their own risk and that reimbursement is dependent on availability of TCR funding. The Letter is NOT an AB 3090 reimbursement or replacement project.)**

The amount expended as approved by the Commission shall be reimbursed by the state if all of the following conditions, as delineated in AB 1335, are met:

- (1) The project is included in an adopted regional transportation plan.
- (2) The Department has authority from the Commission to make an allocation for the project pursuant to Government Code Section 14556.20. [The Commission shall direct the Department to allocate funds ... for projects specified in Government Code Section 14556.40.]
- (3) The expenditures made by the regional or local entity are eligible for reimbursement in accordance with state and federal laws and procedures. In the event expenditures made by the regional or local entity are determined to be ineligible, the state has no obligation to reimburse those expenditures.
- (4) The regional or local entity complies with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

**However**, according to AB 1335, the Commission may delay reimbursement to a TCRP project with an approved Letter, only if cash-management issues prevent immediate repayment.

**Discussion: Staff has proposed that clarifying language be included in the Letter guidelines:**

**1. Basic Requirements That Must Be Met For A Letter To Be Considered By The Commission**

- To be considered for a Letter, TCR projects must have an approved application.
- Letter requests must have up-to-date TCR applications and amendments from eligible lead applicants. Applicants must provide specific information, as required by Commission TCRP guidelines regarding the scope of work, the cost, and the schedule for separate phases of work, a plan describing all capital funds required for the project, the sources and the timing for those funds, and how those funds will be used. Additionally, a Letter request for the construction or procurement phase of a project, that expands or extends transit service (rail, bus, or ferry) must be accompanied by demonstration of financial capability to operate the expanded service once the project has been completed.
- Letter requests requiring regional improvement program funds from the State Transportation Improvement Program to fully fund the phase or project shall be cosigned by the responsible regional transportation planning agency. Letter requests requiring interregional improvement program funds from the State Transportation Improvement Program to fully fund the phase or project shall be cosigned by the Department.
- Letter requests will be retroactive to January 1, 2002 the effective date of AB 1335. Agencies may submit requests for a retroactive Letter for ninety days after the Commission adopts the Letter Guidelines. All subsequent Letter requests, after the 90-day grace period, will be from the date of the Commission approval of the request.
- Letter requests are limited to the amount of funding available for the project as defined in Government Code Section 14556.40.
- Letter requests must identify the alternate funding source(s) that will be substituted for TCRP funds and provide a demonstration of commitment (e.g., resolution, minute order) from its policy board that the alternate funds are available.

**2. Approval of a Letter**

- The Commission will consider concurrently an application approval or application amendment request with a Letter request from an eligible applicant agency.
- A Letter will only be granted for the phase or phases that are in an approved application or application amendment and is valid for the scope(s), schedule(s) and funding that is approved.
- Proposed changes in funding, schedule or project scope for a project with an approved Letter must be requested by the lead applicant agency and the Commission must approve the changes.
- The Department, as the Commission's grants administrator, shall prepare the necessary documentation to memorialize the Commission's actions.

### 3. Monitoring Progress of Projects with a Letter

- Applicants with an approved Letter shall report on progress to date in conformance with the TCR Program Reporting Guidelines regarding expenditures to date, work completed, problems and issues with project, and updating the funding plan for project for each phase.

### 4. Diligent Progress and Rescinding a Letter

- If progress reports from an agency on a Letter project show that diligent progress is not being made in completing the Letter project, as reported by the Department, the Commission may request the lead applicant agency to explain its lack of progress. The Commission may rescind the Letter or may direct the agency to demonstrate it is making diligent progress within the next six-month reporting period. If the Commission finds the lead applicant agency is not pursuing project work diligently, the Commission may rescind the Letter. The Commission will not make an allocation to an applicant requesting reimbursement for a Letter project, if its Letter is rescinded.

### 5. Reimbursement of Letter

- An agency may request when it has completed the component, phase or phases of a Letter project as approved by the Commission may seek to have its Letter liquidated with an allocation by the Commission or at the Commission's direction by the Department, except as provided below in the Priority For Funding TCR Projects category.
- The lead applicant agency shall identify the sources of all funds used in completing the component, phase or phases of the project for which the applicant is seeking an allocation from the Commission. Allocations for reimbursement may occur only if TCR funds are available.

### 6. Priority For Funding TCR Projects:

- A Letter does not represent a financial commitment by the state, if TCRP funds are not available due to cash management issues. Priority for TCR funding will go first to projects that have received a previous allocation, are underway, and have no Letter approval. Second priority will go to those applicants with an approved Letter for a component, project or phase(s) that are completed and are seeking to liquidate the Letter with an allocation to reimburse the TCRP share of those expenditures. Third priority will be to fund TCR projects seeking an initial allocation for a new component, phase or phases.
- If the TCR funding available in a particular year is insufficient to reimburse all Letters seeking reimbursement, the Commission shall establish a priority list for reimbursement, after consultation with regional agencies and the Department.
- If sufficient TCR funds are available in a fiscal year, the Commission will consider allowing an applicant agency to convert a portion or all of a Letter to fully fund a component, phase or phases with a combination of TCR and other funds on a first-come, first-serve basis.

### **Comments From Attendees At The June 11, 2003 Workshop And By Staff:**

- The Commission should ration Letter approvals to keep reimbursement demand down. Will the Commission limit the amount approved?

- Reimbursement priorities should be clarified in more detail. Reimbursement process should be further defined.
- Reimbursement priorities should give Letters first call on available funding, rather than to projects that had received a previous allocation.
- Clarify how and when approved Letter phases or projects become eligible for reimbursement and then receive reimbursement from TCR funding.
- Are locally controlled federal funds such as CMAQ and RSTP funds considered local funds? Are some federal funds excluded?
- Can an agency specify several different examples of funds to preserve options, such as Prop A or Prop C funds, rather than a specific amount from each source?
- Are pending allocations a part of or independent from a Letter request?
- Can an implementing or other lead agency assume lead applicant agency status from Caltrans? (Under AB 1335, only regional or local agencies are eligible to apply for lead applicant agency status.)
- Are Letter reimbursements to be paid back in a lump sum, spread out over the expenditure schedule, or proportional if a number of agencies seek to liquidate their Letter and insufficient TCR funds are available?
- Definitions for component, phase, and project need to be defined.
- When agencies can seek reimbursement?
- Will Caltrans have delegated authority over changes?
- If an agency borrows funds to keep a component, phase, or project going, can it be reimbursed for the interest on the funds borrowed?
- Is the lead applicant agency at risk for its reimbursement if the implementing agency submits ineligible costs?
- What type of monitoring should Caltrans be asked to assume for the overall status of the Letters approved? What specific information should Caltrans seek on behalf of the Commission?
- Should agencies be required to go through a pre-award audit prior to executing a contract for a phase(s) with an approved Letter?

## Attachments

AB 1335

Draft AB 1335 Guidelines

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this act to enhance the ability of regional and local governmental entities to deliver critical transportation capital improvement projects in an expeditious manner.

SEC. 2. Section 14556.33 is added to the Government Code, to read:

14556.33. (a) A regional or local entity that is a lead applicant agency under Article 5 (commencing with Section 14556.40), may apply to the commission for a letter of no prejudice for the project. If approved by the commission, the letter of no prejudice allows the regional or local entity to expend its own funds for any component of the transportation project.

(b) The amount expended under subdivision (a) shall be reimbursed by the state if all of the following conditions are met:

(1) The project is included in an adopted regional transportation plan.

(2) The department makes an allocation for the project pursuant to Section 14556.20.

(3) The expenditures made by the regional or local entity are eligible for reimbursement in accordance with state and federal laws and procedures. In the event expenditures made by the regional or local entity are determined to be ineligible, the state has no obligation to reimburse those expenditures.

(4) The regional or local entity complies with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) Upon execution of an agreement with the department to transfer reimbursement funds for a project described in subdivision (a), the commission may delay reimbursement pursuant to this section only if cash-management issues prevent immediate repayment.

(d) The commission, in consultation with regional and local entities, and the department, may develop guidelines to implement this section.

6-9-2003

PROPOSED

**CALIFORNIA TRANSPORTATION COMMISSION  
GUIDELINES FOR  
LETTER OF NO PREJUDICE  
TRAFFIC CONGESTION RELIEF PROGRAM**

**Resolution G-03-\_\_**

**CALIFORNIA TRANSPORTATION COMMISSION  
GUIDELINES FOR  
LETTER OF NO PREJUDICE  
TRAFFIC CONGESTION RELIEF PROGRAM**

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# 1 AUTHORITY AND PURPOSE

- 1.1 Authority and Scope:** Government Code Section 14556.33, established by Chapter 908 (AB1335) of the Statutes of 2001 allows the California Transportation Commission (Commission) to establish guidelines regarding Letter of No Prejudice (Letter) approval for lead applicant agencies allowing the regional or local entity to expend its own funds for any component of said agency's Traffic Congestion Relief Program (TCRP) project. These statutes require the Commission to consult with Caltrans and representatives of regional and local agencies in developing the guidelines.

These guidelines apply to all projects, funds, and lead applicant and implementing agencies specified in Government Code Section 14556.40, from article 5 of the act, in regards to a Letter. These guidelines become effective upon adoption by the Commission. The Letter Guidelines are intended as an extension of the TCRP Guidelines approved under Resolution G-00-23 and are limited to TRCR Projects requesting/receiving approval for a Letter. All other provisions of TCRP Guidelines remain in effect.

The Commission may amend these guidelines at any time after first giving notice of the proposed amendments.

**1.2 Text of Government Code Section 14556.33:**

*14556.33. (a) A regional or local entity that is a lead applicant agency under Article 5 (commencing with Section 14556.40), may apply to the commission for a letter of no prejudice for the project. If approved by the commission, the letter of no prejudice allows the regional or local entity to expend its own funds for any component of the transportation project.*

*(b) The amount expended under subdivision (a) shall be reimbursed by the state if all of the following conditions are met:*

- (1) The project is included in an adopted regional transportation plan.*
- (2) The department makes an allocation for the project pursuant to Section 14556.20.*
- (3) The expenditures made by the regional or local entity are eligible for reimbursement in accordance with state and federal laws and procedures. In the event expenditures made by the regional or local entity are determined to be ineligible, the state has no obligation to reimburse those expenditures.*
- (4) The regional or local entity complies with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).*

*(c) Upon execution of an agreement with the department to transfer reimbursement funds for a project described in subdivision (a), the commission may delay reimbursement pursuant to this section only if cash-management issues prevent immediate repayment.*

*(d) The commission, in consultation with regional and local entities, and the department, may develop guidelines to implement this section.*



- 1.3 **Definitions:** For purposes of these guidelines the following definitions apply:
- All definitions as indicated in the TCRP Guidelines approved under Resolution G-00-23.
  - Local funds means that funding which is generated by, and under the direct control of the local entity, such as Measure funding, special taxes, and local general fund, or as determined by the Commission. It does not include STIP funding, or federal funding provided for specific projects and/or purposes.
- 1.4 **Purpose and Objectives of Guidelines:** These guidelines are intended to clarify and interpret statutes and to guide and facilitate local, regional and state actions related to obtaining an approved Letter. The Commission intends with these guidelines to:
- Limit the scope of guidelines consistent with the act.
  - Clarify roles and responsibilities.
  - Maintain accountability for actions of the agencies involved.

## 2 RESPONSIBILITIES

- 2.1 **Applicant:** The applicant (lead agency) is responsible for:
- Submitting request(s) for Letter approvals including all necessary documentation (project applications and amendments, allocation requests, replacement funding description and commitment verification)
  - Making diligent progress on the TCRP project with an approved Letter and reporting that progress to the Commission.
  - Submitting amendments when changes are necessary to an approved Letter.
  - Communication with implementing agencies.
- 2.2 **Commission:** The Commission is responsible for:
- Adopting and amending these guidelines
  - Receiving, reviewing, and approving (or denying) Letters.
  - Establishing priorities for reimbursement.
  - Directing the allocation of funds for reimbursement of Letters.
  - Considering and approving (or denying) amendments to Letter status.
  - Making findings regarding project progress.
- 2.3 **Department of Transportation (Caltrans):** The Department is responsible for:
- Reviewing Letter requests and advising the Commission
  - Allocating funds as directed by the Commission
  - Administering and tracking of Letter status.
  - Preparation and administration of agreement(s) to reimburse a Letter liquidation allocation.
- 2.5 **Implementing Agency:** The Implementing Agency is responsible for:
- Communication with the applicant agency.
  - Accounting for expenditure of replacement funding in accordance with TCRP Guidelines for allocated funding, including Section 6.5, Audits, of the TCRP Guidelines.

- Complying with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and all applicable project expenditure.

### **3 LETTER REQUEST**

#### **3.1 Submittal of Letter Request:**

- Letter requests should be submitted in accordance with established timeframes for TCRP applications and amendments for timely consideration by the Commission.
- In order to be considered by the commission, a Letter request shall:
  - Include all relative information as described in 3.2 below.
  - Have an approved TCR project application.
  - Indicate that the implementing agency is ready to start (or continue) work.
  - Have a full and committed funding plan.

#### **3.2 Content and Format of Letter Request:** The Commission expects a complete Letter request to include at a minimum the following information, unless some of the information is not applicable:

- A letter requesting Letter status including a summary of any concurrent actions needed from the commission (up-dated project application information) and a discussion of the source and commitment of funding to be used in place of TCR funds.
- Documents needed for obtaining concurrent Commission approval for TCR applications and/or amendments in accordance with TCR guidelines and standards.
- Letter requests must identify the alternate funding source(s) that will be substituted for TCRP funds and provide a demonstration of commitment (e.g., resolution, minute order) from its policy board that the alternate funds are available.
- A Letter request for construction or procurement phase of a project that expands or extends transit service (rail, bus, or ferry) must be accompanied by demonstration of financial capability to operate the expanded service once the project has been completed.
- Letter requests requiring regional improvement program funds from the State Transportation Improvement Program to fully fund the phase or project shall be cosigned by the responsible regional transportation planning agency.
- Letter requests requiring interregional improvement program funds from the State Transportation Improvement Program to fully fund the phase or project shall be cosigned by the Department.

#### **3.3 Review of Letter Requests:** Review of Letter requests shall be conducted in accordance with TCRP Guidelines and established timeframes for project application approval.

#### **3.4 Commission Approval of Letter Requests:**

- Letter requests are limited to the amount of funding available for the project as defined in Government Code Section 14556.40.
- Letter requests will be retroactive to January 1, 2002 the effective date of AB 1335. Agencies may submit requests for a retroactive Letter for ninety days after the Commission adopts the Letter Guidelines. All subsequent Letter requests, after the 90-day grace period, will be from the date of the Commission approval of the request.

- The Commission will consider concurrently an application approval or application amendment request with a Letter request from an eligible applicant agency.
- A Letter will only be granted for the phase or phases that are in an approved application or application amendment and is valid for the scope(s), schedule(s) and funding that is approved.
- Proposed changes in funding, schedule or project scope for a TCRP project with an approved Letter must be requested by the lead applicant agency and the Commission must approve the changes.

## **4 LETTER/PROJECT MONITORING**

**4.1 Monitoring Progress of Projects with a Letter:** Applicants with an approved Letter shall report on progress to date in conformance with the TCR Program Reporting Guidelines regarding expenditures to date, work completed, problems and issues with project, and updating the funding plan for project for each phase.

**4.2 Diligent Progress and Rescinding a Letter:**

- If progress reports from an agency on a TCRP project with an approved Letter show that diligent progress is not being made in completing the project as reported by the Department, the Commission may request the lead applicant agency to explain its lack of progress.
- The Commission may rescind the Letter or may direct the agency to demonstrate it is making diligent progress within the next six-month reporting period.
- If the Commission finds the lead applicant agency is not pursuing project work diligently, the Commission may rescind the Letter.
- The Commission will not make an allocation to an applicant requesting reimbursement for a TCRP project with an approved Letter, if its Letter is rescinded.

## **5 REIMBURSEMENT OF LETTER**

**5.1 Request for Reimbursement:**

- An agency, upon completion of the component, phase or phases of a TCRP project with an approved Letter as approved by the Commission, may request to have its Letter liquidated with an allocation by the Commission, or at the Commission's direction, by the Department, except as provided below in the Priority For Funding TCR Projects (see Section 5.2).
- The lead applicant agency shall identify the sources of all funds used in completing the component, phase or phases of the project for which the applicant is seeking an allocation from the Commission. A full accounting of the expended funds to be reimbursed shall be provided in accordance with TCRP Guidelines for allocated funding including Section 6.5, Audits, of the TCRP Guidelines.
- Allocations for reimbursement may occur only if TCR funds are available.

**5.2 Priority For Funding TCR Projects:**

- A Letter does not represent a financial commitment by the state, if TCRP funds are not available due to cash management issues. Priority for TCR funding will go:
  - First to projects that have received a previous allocation, are underway, and have no Letter approval.

- Second priority will go to those applicants with an approved Letter for a component, project or phase(s) that are completed and are seeking to liquidate the Letter with an allocation to reimburse the TCRP share of those expenditures.
- Third priority will be to fund TCR projects seeking an initial allocation for a new component, phase or phases.
- If the TCR funding available in a particular year is insufficient to reimburse all Letters seeking reimbursement, the Commission shall establish a priority list for reimbursement, after consultation with regional agencies and the Department.
- If sufficient TCR funds are available in a fiscal year, the Commission will consider allowing an applicant agency to convert a portion or all of a Letter to fully fund a component, phase or phases with a combination of TCR and other funds on a first-come, first-serve basis.